

INTRODUCTORY NOTE TO RESOLUTION 42/21 (U.N.H.R. COUNCIL)
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[July 13, 2021]

Introduction

On July 13, 2021, the United Nations Human Rights Council (HRC) adopted a resolution designed to facilitate the enjoyment of the human rights and other basic freedoms of Africans and people of African descent in every region of the world, specifically against excessive use of force by law enforcement officers. The Resolution deplored all forms of racial discrimination against Africans and people of African descent, condemned “the continuing racially discriminatory and violent practices” perpetrated against this group by many law enforcement officials, and urged states “to seize every opportunity” to implement an “anti-racism agenda” that prioritizes “racial equality and justice” for the group, including better use of independent national human rights institutions and preferential programs, among other far-reaching, substantive techniques. Although not yet constituted, the Resolution established an independent committee, comprising individuals with law enforcement and human rights expertise, charged with the responsibility for “advanc[ing] racial justice and equality [with]in the context of law enforcement in all parts of the world” through various means that include visits to countries where violations are taking place.

Characteristic of UN announcements, the Resolution was preceded by a list of preambulatory statements, including the HRC’s self-recognition of the need for an “intersectional” approach to dealing with systemic racism and discrimination, and its acknowledgment of “the vast amount of existing recommendations” by the United Nations related to racial discrimination, including in law enforcement, that states should implement. One of those recommendations was the Durban Declaration and Program of Action (DDPA), a blueprint unveiled by the United Nations in 2001, designed to combat intolerance in the world, including racism, racial discrimination, and xenophobia.

Historical Background, Context, and Significances

Every event is driven by a medley of remote causes and immediate trigger(s). The United Nations emerged as a replacement for the League of Nations because of the failure of the latter to prevent World War II.¹ Thus, since its inception, the main mission of the organization has been the maintenance of international peace and security.² Law enforcement operations feature prominently in this initiative because of the domestic tranquility they contribute to this critical mission when done well. Related to this role, because of the threat their violation poses for international peace and security, the United Nations maintains a solicitude for minority rights that foregrounds its birth after World War II.³ Yet, despite these high-minded responsibilities, race and racism remain factors in international relations at a disconcerting magnitude that, even via this Resolution, the United Nations itself acknowledges. Commentaries abound about the inherently “racist character of the contemporary international system,” indicated by multiple issues, such as “the deeply unjust historical foundations of the present system,” economic disparity between the industrialized North and developing South, responses to humanitarian suffering, and refugees, among others.⁴ Within the specific context of the United States, from the standpoint of advocacy, human rights decisively emerged over civil rights as a more workable approach to the response against systemic racism in the country that, during the Civil Rights Movement, some African American leaders likened to genocide.⁵

The immediate and most pressing impetus underlying the adoption of the Resolution was the death of George Floyd, an African American man, in the United States on May 25, 2020. His death sparked a firestorm of demonstrations protesting the use of excessive force by law enforcement officers, especially against minority groups.⁶ Floyd’s death was the result of a suffocation that took place when a white police officer knelt on the victim’s neck.⁷ Unmistakably, this tragedy featured among the list of preambles that peppered the Resolution here under review. Galvanized by police brutality in the United States, three points of significance gleanable from the Resolution under introduction are: the United Nations’ remit, which revolves around promotion of international peace and security of which

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domestic law enforcement is part and parcel; concern for the human rights of minority peoples, linked to law enforcement excesses denounced by the Resolution; and the continuing influence of race, for better or worse, in international relations and law.

Conclusion and Prospects for the Future

Intolerance is a virus that “confuses the past, threatens the future, and renders the present inaccessible.”⁸ This is why, in the current international system, non-racism is not enough; instead, societies seeking to free themselves from intolerance must aim to be “anti-racist.”⁹ More than window-dressing lip-service, antiracism is “the commitment to fight racism wherever [one] find[s] it, including in [one’s self].”¹⁰ It is the “[t]olerance, inter-cultural dialogue[,] and respect for diversity,” lodestar in an interdependent world, that Kofi Anan, former UN Secretary-General once suggested.¹¹ This appears to be the model, grounding every aspect and level of human relations—including law enforcement—to which this HRC Resolution points.

ENDNOTES

- 1 See, e.g., M. Patrick Cottrell, *The Evolution and Legitimacy of International Security Institutions* 65–99 (2016) (“From League of Nations to United Nations”).
- 2 Charter of the U.N., ch. VII, <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.
- 3 See, e.g., U.N. High Commissioner H.R., *Promoting and Protecting Minority Rights A Guide for Advocates* (2012).
- 4 Katie Lockwood, *Is the International System Racist?* E-INT’L RELATIONS (Mar. 3, 2019), <https://www.e-ir.info/2019/03/03/is-the-international-system-racist/>. For a penetrating analysis imbued with more historical depth, see Srdjan Vucetic and Randolph B. Persaud, *Race in International Relations, in Race, Gender, and Culture, in INTERNATIONAL RELATIONS: POSTCOLONIAL PERSPECTIVES* ch.3 (Persaud and Alina Sajed, eds., 2018) (arguing that “[r]ace and racism manifest themselves in . . . mutable, context-dependent forms,” mandating that “international relations scholars . . . develop conceptual and political ways of understanding them,” even as they “reflect on their own position as both producers and products of the Eurocentric and ideological base of white supremacy.” See also Tilden J. Le Melle, *Race in International Relations*, 10 INT’L STUD. PERSPECTIVES 77–83 (2009) (arguing that from the twentieth into the twenty-first century, “the problem of color in domestic and international relations still remains,” and that, for all the important changes that have taken place in world politics, including the emergence of China and India, non-European countries, as major powers, “[t]he international system remains still a white dominant racially stratified system.”)
- 5 See William L. Patterson (ed.), *We Charge Genocide: The Crime of Government against the Negro People* (1970); and Carol Anderson, *Eyes off the Prize: The United Nations and the African American Struggle for Human Rights, 1944–1955* (2003). See also Alex Hinton, *70 Years Ago Black Activists Accused the U.S. of Genocide*, POLITICO (Dec. 26, 2021), <https://www.politico.com/news/magazine/2021/12/26/black-activists-charge-genocide-united-states-systemic-racism-526045>.
- 6 See Anne-Christine Poujoulat, *Protests Across the Globe after George Floyd’s Death*, CNN (Updated June 13, 2020), <https://www.cnn.com/2020/06/06/world/gallery/intl-george-floyd-protests> (one placard from a protest in Manchester, England, read that COVID-19 and racism are “2 viruses killing Black people”).
- 7 Evan Hill et al., *How George Floyd Was Killed in Police Custody*, THE NEW YORK TIMES (May 31, 2020; updated January 24, 2022), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>.
- 8 Monique Valeris, *30 Insightful Quotes on Racism and the Power of Diversity*, GOOD HOUSEKEEPING (June 5, 2020), (quote No. 1, attributed to the African American writer and civil rights activist Maya Angelou).
- 9 *Id.* (quote No. 8 attributed to the African American scholar and activist Angela Davis).
- 10 *Id.* (quote No. 29 attributed to the African American writer Ijeoma Oluo).
- 11 *Id.* (quote No. 26 attributed to Kofi Anan).

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Agenda item 9

Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Resolution adopted by the Human Rights Council on 13 July 2021

47/21. Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers through transformative change for racial justice and equality

The Human Rights Council,

Reaffirming the purposes and principles of the Charter of the United Nations and the Universal Declaration of Human Rights, and promoting and encouraging respect for human rights and fundamental freedoms for all,

Recalling the Universal Declaration of Human Rights, which states that all human beings are born free and equal in dignity and rights, and that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour or national origin,

Recalling also the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and bearing in mind the Vienna Declaration and Programme of Action,

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Recalling further its previous resolutions on the comprehensive follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the effective implementation of the Durban Declaration and Programme of Action, and the International Decade for People of African Descent as proclaimed by the General Assembly in its resolution 68/237 of 23 December 2013,

Stressing that 2021 marks the twentieth anniversary of the adoption of the Durban Declaration and Programme of Action,

Noting with appreciation the adoption on 9 December 2020 by the Working Group of Experts on People of African Descent of operational guidelines on the inclusion of people of African descent in the 2030 Agenda for Sustainable Development,

Recalling Human Rights Council resolution 43/1 of 19 June 2020 and taking note with appreciation of the report of the United Nations High Commissioner for Human Rights, submitted pursuant to that resolution, on the promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers,¹ the annex thereto entitled “Four-point Agenda towards Transformative Change for Racial Justice and Equality”, and relevant conference room paper,² and noting that the report is grounded in the lived experiences of families of victims and people of African descent whose courage and determination are encouraging States, the United Nations Organization and others to take bolder steps to address long-standing human rights violations and to achieve racial justice and equality,

Acknowledging that slavery and the slave trade, including the transatlantic slave trade, were appalling tragedies in the history of humanity not only because of their abhorrent barbarism but also in terms of their magnitude and organized nature, and especially their negation of the essence of the victims, acknowledging also that enslavement is a crime against humanity and should always have been a crime, and noting that the transatlantic slave trade is among the major sources and manifestations of racism, racial discrimination, xenophobia and related intolerance, and that Africans and people of African descent, Asians and people of Asian descent and indigenous peoples were victims of these acts and continue to be victims of their consequences,

Acknowledging also that there is an increasing willingness and emerging practice to acknowledge the need to repair the continuing impact of enslavement, the transatlantic trade in enslaved Africans and colonialism, and inviting States to seize opportunities to advance the anti-racism agenda, to prioritize attaining racial equity in implementing the 2030 Agenda, and to ensure that people of African descent are not left behind,

Recalling the tragic murder of George Floyd in Minnesota, United States of America, on 25 May 2020, which drew attention to the scourge of systemic and structural racism and galvanized efforts to address this global problem in the United States and around the world,

Welcoming the judicial recourse to address this crime in the trial against the perpetrator of the murder of George Floyd in Minnesota Fourth Judicial District Court, on 20 April 2021, and recalling the statement by the High Commissioner on 21 April 2021 on the guilty verdict in that case,

Recalling all statements made by the special procedure mandate holders regarding the killing of George Floyd, in particular their joint statement of 5 June 2020, and the statements made by the High Commissioner on 3 June 2020, 1 October 2020 and 19 March 2021,

Recognizing that systemic racism needs a systemic response to rapidly reverse denial and alter structures, institutions and behaviours leading to direct or indirect discrimination against Africans and people of African descent in every part of life,

Recognizing also that systemic racism is intersectional by nature as it spreads in a variety of societal sectors, and that in order to tackle systemic racism and discrimination, response measures should also be intersectional,

Stressing that law enforcement officials, in the performance of their duties, shall respect and protect human dignity and maintain and uphold the human rights of all persons, recalling the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and bearing in mind the numerous other international standards and norms in the field of the administration of justice,

Expressing deep concern at the extent of the challenges that victims and families of victims report in their pursuit of justice, and underscoring that the independence and impartiality of the judiciary, the integrity of the judicial system and an independent legal profession are essential prerequisites for the protection of human rights, the rule of law, good governance and democracy,

Stressing that the implementation of robust measures to end impunity and ensure accountability and redress for victims and their families of excessive use of force and other human rights violations by law enforcement officers, in accordance with international human rights law, is critical,

Stressing also that everyone, including people and communities of African descent, should be able to participate in an inclusive manner and guide the design and implementation of processes that contribute to halting, reversing and repairing the lasting consequences and ongoing manifestations of systemic racism, and notably acknowledging the important role that young people have played and should continue to play in these processes,

Encouraging States to examine the extent and impact of systemic racism and to adopt effective legal, policy and institutional measures that address racism beyond a summation of individualized acts, and recommending that progress be measured according to indicators grounded in impact rather than intent,

Acknowledging the vast amount of existing recommendations made by the United Nations human rights system to address issues of racial discrimination within the administration of justice, and urging States to consider their implementation,

Noting with appreciation the agenda towards transformative change for racial justice and equality presented by the High Commissioner, which aims, inter alia, to encourage States to ensure that the voices of Africans and of people of African descent and those who stand up against racism are heard and that their concerns are acted upon, and to acknowledge and confront legacies, including through accountability and redress,

1. *Deplores* all forms of racial discrimination, including systemic and structural racism, and its effects on Africans and on people of African descent and their families, and communities around the world;
2. *Condemns* the continuing racially discriminatory and violent practices perpetrated by many law enforcement officials against Africans and people of African descent, and systemic racism in the law enforcement and criminal justice systems, and underscores the importance of ensuring that such acts are not treated with impunity;
3. *Recalls* that law enforcement officials, in carrying out their duties, should apply non-violent means before resorting, when absolutely necessary, to the use of force, and that in any event all use of force should comply with the fundamental principles of legality, necessity, proportionality, precaution and non-discrimination, and that those using force should be accountable for each use of force;
4. *Stresses* that, where it is lawful to arrest certain participants or to disperse an assembly, such actions should comply with international law and have a basis in the domestic law provisions on the permissible use of force, and that domestic legal regimes on the use of force by law enforcement officials should be brought into line with the requirements of international law, where that is not already the case;
5. *Recommends* that domestic legal regimes on the use of force by law enforcement officials be brought into line with appropriate international standards, such as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the *United Nations Human Rights Guidance*

on *Less-Lethal Weapons in Law Enforcement*, and that law enforcement agencies provide law enforcement officials with appropriate human rights training to ensure that they comply with international rules and standards for law enforcement officials;

6. *Urges* States to seize every opportunity to advance the anti-racism agenda and to prioritize attaining racial equality and justice by accelerating action to implement the 2030 Agenda for Sustainable Development to ensure that Africans and people of African descent are not left behind;

7. *Encourages* all States and relevant stakeholders to pay due attention to the operational guidelines on the inclusion of people of African descent in the 2030 Agenda in order to ensure that people of African descent are not left behind in the implementation of the Agenda;

8. *Urges* States to adopt a systemic approach to combating racial discrimination through the adoption and monitoring of whole-of-government and whole-of-society responses that are contained in comprehensive and adequately resourced national and regional action plans and that include, where necessary, special measures to secure for disadvantaged groups, notably Africans and people of African descent, the full and equal enjoyment of human rights;

9. *Also urges* States, as appropriate, to establish, strengthen, review and reinforce the effectiveness of independent national human rights institutions, where applicable, particularly on issues of racism, racial discrimination, xenophobia and related intolerance, in conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and to provide them with adequate financial resources, competence and capacity for investigation, research, education and public awareness-raising activities to combat these phenomena, including in law enforcement and criminal justice systems;

10. *Decides* to establish an international independent expert mechanism, comprising three experts with law enforcement and human rights expertise, to be appointed by the President of the Human Rights Council, with guidance from the United Nations High Commissioner for Human Rights, in order to further transformative change for racial justice and equality in the context of law enforcement globally, especially where relating to the legacies of colonialism and the Transatlantic slave trade in enslaved Africans, to investigate Governments' responses to peaceful anti-racism protests and all violations of international human rights law and to contribute to accountability and redress for victims; the mechanism should function in close collaboration with relevant special procedure mandate holders, including the Working Group of Experts on People of African Descent and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, also with a view to avoid duplication;

11. *Also decides* that the international independent expert mechanism shall have a three-year mandate, within the purview of its mandate, to advance racial justice and equality in the context of law enforcement in all parts of the world by, inter alia, conducting country visits, inclusive outreach and consultations with States, directly affected individuals and communities, and other stakeholders, and taking into account an intersectional approach by;

(a) Examining systemic racism, including as it relates to structural and institutional racism, faced by Africans and people of African descent, the excessive use of force and other violations of international human rights law against Africans and people of African descent by law enforcement officials, including with regard to patterns, policies, processes and specific incidents, such as those identified in the report of the High Commissioner and relevant conference room paper;

(b) Examining the root causes of systemic racism in law enforcement and the criminal justice system, the excessive use of force, racial profiling and other human rights violations by law enforcement officials against Africans and people of African descent, and how domestic law, policy and practices may lead to disproportionate and widespread interaction between law enforcement officers and Africans and people of African descent;

(c) Making recommendations regarding how domestic legal regimes on the use of force by law enforcement officials can be brought into line with the applicable human rights standards, such as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, and ensure that law enforcement officials receive appropriate human rights training to ensure that they comply with obligations under international law;

(d) Making recommendations on the collection and publication of data, with strict safeguards and in line with international law, disaggregated by victims' race or ethnic origin, on deaths and serious injuries by law enforcement officials and related prosecutions and convictions, as well as any disciplinary actions, to drive and assess responses to systemic racism in the area of law enforcement and the criminal justice system;

(e) Examining any nexus between supremacist movements and actors within law enforcement and the criminal justice system;

(f) Making recommendations with regard to addressing systemic racism, in law enforcement and the criminal justice systems, closing trust deficits, strengthening institutional oversight, adopting alternative and complementary methods to policing and the use of force, and encouraging stocktaking of lessons learned;

(g) Making recommendations on the concrete steps needed to ensure access to justice, accountability and redress for excessive use of force and other human rights violations by law enforcement officials against Africans and people of African descent, including independent and well-resourced mechanisms to support victims of human rights violations by law enforcement officials, their families and communities;

(h) Monitoring the implementation of recommendations on ending impunity for violations by law enforcement officials emanating from the report of the High Commissioner, and identifying obstacles to their full implementation;

(i) Coordinating its work and further strengthening its participation, engagement and cooperation, as appropriate, with all relevant United Nations mechanisms, bodies and processes, including the United Nations Office on Drugs and Crime and the United Nations Congress on Crime Prevention and Criminal Justice regional human rights mechanisms and national human rights institutions;

12. *Calls upon* all States and other relevant stakeholders to cooperate fully with the international independent expert mechanism towards the effective fulfilment of its mandate and, in particular, to provide it with any information and documentation it may require, as well as any other forms of assistance pertaining to its mandate;

13. *Requests* the Secretary-General to provide the international independent expert mechanism, through the Office of the United Nations High Commissioner for Human Rights, with full administrative, technical and logistical support and the resources necessary to enable it to carry out its mandate;

14. *Requests* the High Commissioner to enhance and broaden monitoring by the Office of the High Commissioner, including through its field presences, with the assistance of relevant special procedure mandate holders and relevant United Nations agencies, in order to continue to report on systemic racism, violations of international human rights law against Africans and people of African descent by law enforcement agencies, to contribute to accountability and redress and to take further action globally towards transformative change for racial justice and equality, including by providing support for and strengthening assistance to States and other stakeholders, particularly people of African descent and their organizations, and by giving further visibility to this work;

15. *Requests* the High Commissioner and the international independent expert mechanism each to prepare, on an annual basis, a written report, and to present them jointly to the Human Rights Council, starting from its fifty-first session, during an enhanced interactive dialogue that prioritizes the

participation of directly affected individuals and communities, including victims and their families, and to transmit their reports to the General Assembly;

16. *Requests* the Secretary-General to provide the Office of the High Commissioner with full administrative, technical and logistical support and the resources necessary to enable it to carry out its mandate;

17. *Calls upon* all States and all relevant stakeholders to cooperate fully with the High Commissioner in the preparation of the annual reports;

18. *Also calls upon* all States and all relevant stakeholders to ensure the accountability of law enforcement officials for human rights violations and crimes against Africans and people of African descent, to close trust deficits and to strengthen institutional oversight;

19. *Further calls upon* all States and all relevant stakeholders to ensure that Africans and people of African descent and those who stand up against racism are protected, that their voices are heard and that their concerns are acted upon;

20. *Invites* all treaty bodies, special procedure mandate holders and international and regional human rights mechanisms, within their respective mandates, to pay due attention to all forms of racism, racial discrimination, xenophobia and related intolerance, including against Africans and people of African descent, and to bring them to the attention of the Human Rights Council;

21. *Decides* to remain seized of the matter.

*38th meeting
13 July 2021*

END NOTES

1 A/HRC/47/53.

2 A/HRC/47/CRP.1, available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session47/Pages/ListReports.aspx.